REMARKS

Claims 31 to 34 are added, and therefore claims 13 to 34 are now pending.

Reconsideration is respectfully requested based on the following.

Claims 13 to 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,027 ("Ernst"), in view of U.S. Patent No. 7,206,697 ("Olney").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Ernst and Olney references, whether taken alone or combined, do not disclose or suggest the feature of "ascertaining, by the evaluation device, whether, *assuming that the preceding vehicle initiated a deceleration*, a collision with the preceding vehicle would be avoidable as a function of a reaction time of the driver and a maximum possible deceleration of the motor vehicle", as provided for in the context of the presently claimed subject matter.

In this regard, neither system *assumes* that a vehicle *initiates* a deceleration, since both cited references refer to "assumed parameters" after an actual deceleration is initiated. "Assume" has a plain and clear meaning, especially in the context of the present application

which is not disclosed by a limitation dealing with measuring, sensing, or determining an *actual* presently occurring event.

Specifically, with regard to the Ernst reference, as was fully explained in the prior Response, Ernst refers to several assumptions about the character of a deceleration, after that deceleration has already been initiated. For example, "[i]n some situations *even if it is known that the lead vehicle 106 is decelerating*, it is not known what the final speed of the lead vehicle 106 will be. One approach is to *assume that the lead vehicle will come to a complete stop.*" (Ernst at col. 28, lines 14 to 17 (emphasis added)). The feature of "*assuming*" that a deceleration was *initiated* is not disclosed by assuming that a deceleration is *continued* in the future to an assumed end-point. Nowhere in Ernst is the actual initiation of a deceleration assumed. The only assumptions of Ernst are variables used to determine one or more alarms, *in the context of an already decelerating lead vehicle.* (See, e.g., Ernst at cited section: col. 27, line 15 to col. 28, line 63).

The secondary Olney reference also does not disclose this feature, since it only refers to a combination of the "Driver Radar Enhanced Adaptive Modeling System" with a "Forward Collision-Warning System." (Olney at col. 6, lines 43 to 46). The Olney system merely concerns modifying the driver reaction-time parameter of prior art FCW systems with the "Driver Attitude" model. The section cited by the Office states (at col. 7, lines 42 to 44) that "[a]n extreme stop condition is the condition where, at the moment the lead vehicle driver initiates a stop maneuver, the lead vehicle is assumed to be at full deceleration."

There is clearly no mention (or implication) of any *assumed initiation* here, as this section expressly states that *at the moment* of initiation (for example, an actual initiation of a deceleration), "the lead vehicle is *assumed* to be at *full deceleration* ." Once again, and consistent with the fact that Olney concerns a FCW system in combination with a wholly unrelated feature (i.e. driver attitude), even if the ***conditions*** of a deceleration are assumed, it is only subsequent to *an actual deceleration being initiated.* This is wholly different than the presently claimed subject matter.

Separately, to the extent Olney is asserted to disclose "a maximum possible deceleration," the combination of Olney and Ernst is plainly improper. As previously explained, Ernst plainly teaches away from the of "a function of a reaction time of the driver and *a **maximum** possible deceleration of the motor vehicle.*" In this regard, the Ernst reference specifically states that the "system 100 *should* provide a user with a warning in time for the user to avoid a collision without having t[o] break the vehicle 102 *at a braking*

level that exceeds a braking threshold at which the user is comfortable." (Ernst, col. 19, line 65 to col. 20, line 2) (emphasis added).

It is therefore abundantly plain that the Ernst reference specifically teaches away from any calculation involving "a *maximum* possible deceleration of the motor vehicle", as provided for in the context of claim 13. Thus, a person of ordinary skill in the art would have no reason to combine Ernst with a reference that concerns subject matter which Ernst plainly teaches away from.

Accordingly, claim 13 is allowable, as are its dependent claims 14 to 20.

Claim 21 includes features like those of claim 13, and is therefore allowable for essentially the same reasons as claim 13, as are its dependent claims 22 to 24.

New claims 31 to 34 do not add any new subject matter and are plainly supported by the present application. Claims 31 and 32 depend from claim 21 and they are therefore allowable for at least the same reasons. Claims 33 and 34 depend from claim 13 and they are therefore allowable for at least the same reasons.

In summary, all of claims 13 to 34 are allowable.

CONCLUSION

In view of the foregoing, all of claims 13 to 34 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
KENYON & KENYON LLP

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By: _____
Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, NY 10004
(212) 425-7200

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